See no 325

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 711.

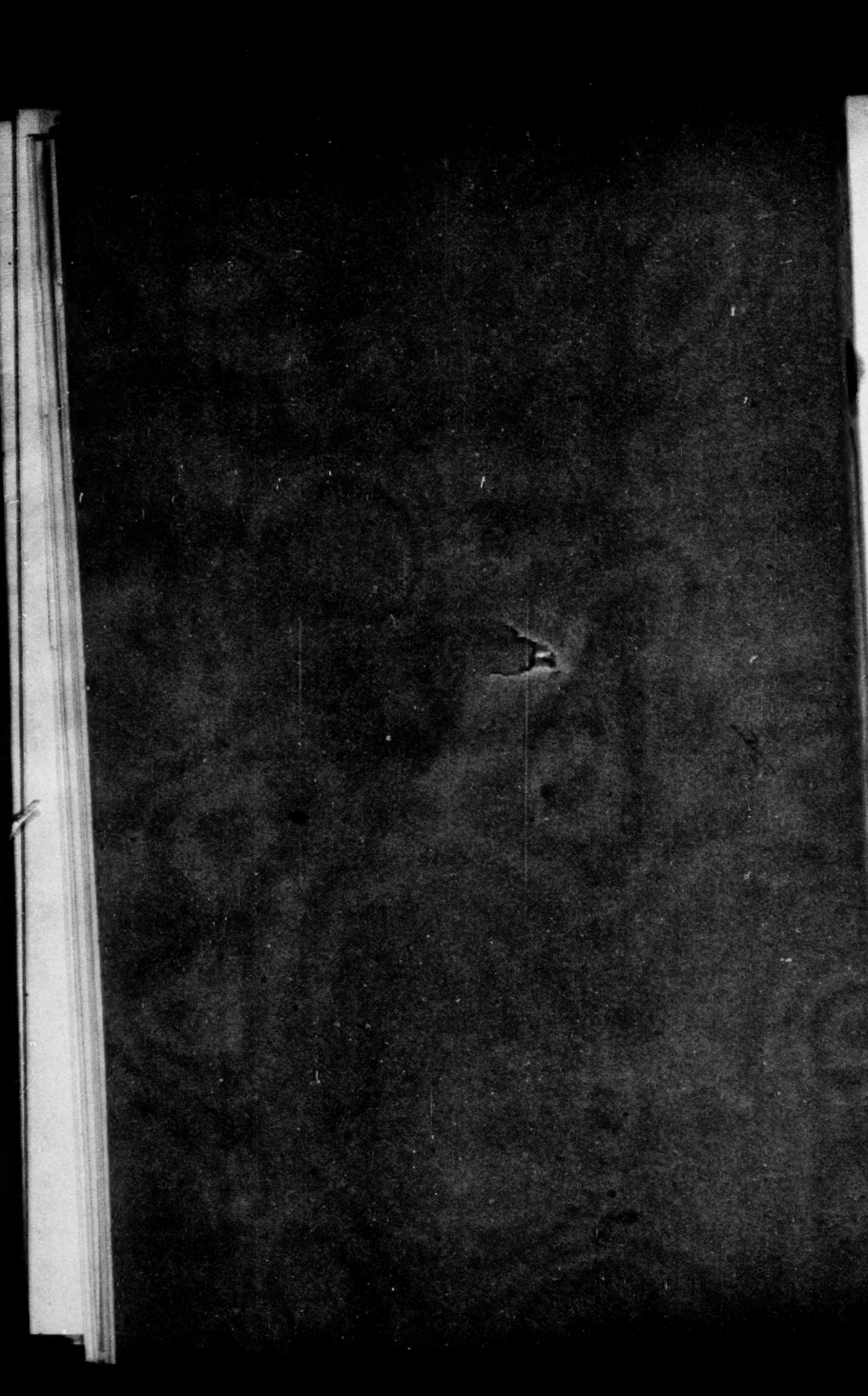
EDWIN A. MERRITT, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOSEPH PARK, JR., CHARLES PARK, AND JOHN M. TILFORD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 15, 1881.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Joseph Park, jr., Charles Park, and John M. Tilford, plaintiffs, and Edwin A. Merritt, defendant, a manifest error hath happened, to the great damage of the said Edwin A. Merritt, as by his complaint appear': We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-one, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the first day of October, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

The foregoing writ is hereby allowed.

ADDISON BROWN, *U. S. D. J.*

2 (Indorsed:) E. & A. A., 347. 5884. U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, against Joseph Park, jr., & al., defendants in error. Writ of error. S. L. Woodford, attorney for plaintiff in error.

Service of a copy of the within writ of error is hereby admitted this 1st day of October, 1881.

HARTLEY & COLEMAN,
Attorneys for Defendants in Error.

U. S. circuit court. Filed Oct. 1, 1881. Joseph M. Deuel, clerk.

UNITED STATES OF AMERICA,
Southern District of New York:

3 I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from four to thirty-two inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Edwin A. Merritt, plaintiff in error, against Joseph Park, jr., Charles Park, and John M. Tilford, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this sixth day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

JOSEPH M. DEUEL, *Clerk.*

4–5 The President of the United States of America to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Edwin A. Merritt, defendant, by Joseph Park, jr., et als., plaintiffs, do therefore command you that the record and proceedings in the said cause you, distinctly and openly, send to the said circuit court, at the city of New York, on the 28th day of July, 1879, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 24th day of July, in the year one thousand eight hundred and seventy-nine.

[L. S.] JOHN J. DAVENPORT, *Clerk.*

STEWART L. WOODFORD,
U. S. Attorney, Attorney for Defendant.

6 (Indorsed:) U. S. circuit court. *vs.* Edwin A. Merritt. Copy certiorari. Stewart L. Woodford, U. S. attorney, attorney for defendant.

Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, 188 .

Yours,

STEWART L. WOODFORD,
U. S. Attorney, Attorney for Defendant.

To plaintiff's attorney.

Due service of a copy of the within, and of the above notice, is hereby admitted.

New York, 188 .

Plaintiff's Attorney.

7 *Complaint.*

Supreme court of the State of New York, city and county of New York.

JOSEPH PARK, JR., CHARLES PARK, & JOHN M. TILFORD, plaintiffs,
against
EDWIN A. MERRITT, DEFENDANT.

Plaintiffs complain—

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiffs were, during said times, partners in trade, under the firm name of Park and Tilford, and as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. That by the laws of the United States the true duty upon said goods was at the rates levied and collected by said collector upon the contents of said bottles & jars, but plaintiffs, in order to obtain said goods, were compelled to pay the defendant, as such collector, the sum of four hundred and thirty-nine $\frac{89}{100}$ dollars upon said bottles & jars, the usual and necessary coverings of said goods, which was in excess of the rates and of the amounts required by law.

4th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiffs made due and timely appeals on each entry to the Secretary of the Treasury, who affirmed the decision of the defendant upon certain of said entries, and as to the rest, neglected for more than ninety days, as well from the dates of said appeals, as prior to the commencement of this action, to decide said appeals.

6th. That the bill of particulars, hereto annexed, states for each importation separately, the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, if rendered; together with the other particulars required by law; and is made a part hereof.

7th. That said sum, so exacted as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for four hundred and thirty-nine $\frac{89}{100}$ dollars, with interest on the several sums named in the bill of particulars, from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

HARTLEY & COLEMAN,
Attorneys for Plaintiffs.

8 (Indorsed:) Supreme court, city and county of New York. against Edwin A. Merritt. Complaint.

Due service of a copy hereof is hereby acknowledged. Service of a copy of bill of particulars waived this day of , 1881.

Att'y for Def't.

Hartley & Coleman, pl'ffs' attorneys, 62 Wall street, New York City.

9 *Bill of particulars.*

[Name of importer (for all the importations). .]

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
				1879.			1879.		
Bottled beer and bottles containing the same.	Ellen Austin.	London	Jan. 18, '79.	Mar. 7	Mar. 7	113 70	Apr. 1 & 9.	Apr. 1 & 9.	May 28 & June 24.
	Plymouth Rock.	"	Dec. 24, '78.	" 10	" 10	113 70	" 7	" 7	June 4

10 (Indorsed:) Supreme court, city and county of New York. against Edwin A. Merritt. Bill of particulars.

NEW YORK, , 1881.

To STEWART L. WOODFORD, Esquire, defendant's attorney:

SIR: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars.

HARTLEY & COLEMAN,
Plaintiffs' Attorneys, 62 Wall street.

Due service hereof admitted. Service of copy of complaint waived this day , 1881.

Defendant's Attorney.

11 Supreme court, city and county of New York.

JOSEPH PARK, JR., ET AL.,
vs.
EDWIN A. MERRITT, COLLECTOR, &C.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action.

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from
12 plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise, and were received by defendant by virtue of his office as said collector, and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter and be-

fore the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys so received from plaintiffs were the amounts due from them to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiffs' import entry thereof,
13 were collected or received by defendant from the plaintiff.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant, further answering, admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof
14 thereof as they may be advised.

V. And as to any other allegations in said complaint contained not hereinbefore fully answered or admitted, defendant denies the same and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised:

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Edwin A. Merritt, being duly sworn, says that he is the defendant above named; that the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.
15 Sworn to before me day of , 18 .

Notary Public, New York County.

(Endorsed:) U. S. circuit court, southern district of New York, vs. Edwin A. Merritt, collector, &c. Answer. Stewart L. Woodford, United States attorney, attorney for defendant.

Due service of a copy of the within answer is hereby admitted.
New York, , 188 .

Pl'ff's' Attorney.

To , *Plaintiffs' Attorney.*

16 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second cir-

cuit, held at the United States court-rooms, in the city of New York, on Friday, the 29th day of October, in the year of our Lord one thousand eight hundred and eighty.

Present, the honorable Nathaniel Shipman, judge.

JOSEPH PARK ET AL. vs. EDWIN A. MERRITT. } 5884.

On motion of Edward Hartley, esq., of counsel for the plaintiff in the above-entitled action, ordered trial.

Jurors sworn: Nicholas R. Connor, George F. Sack, Joseph A. Ward, Frank S. Wing, Heber R. Bishop, Kellogg H. Loomis, Henry A. Dickinson, Sheridan Poole, Alex'r Vanderburgh, John Boardman, Benjamin Brewster, Robert Fultonbutting.

Mr. Hartley opens the case on the part of the plaintiffs.

Evidence for the plaintiffs:

Pl'ffs' entries, invoices, protests, and appeals.

DAVID C. STURGIS sworn.

A. B. Herrick, ass't U. S. attorney, waives the opening of the
17 case on the part of the defendant, and introduces no evidence on the part of the defendant.

Mr. Herrick moves that the court direct the jury to find a verdict for the defendant.

Mr. Hartley moves that the court direct the jury to find a verdict for the plaintiffs.

The court directs the jury to find a verdict for the plaintiffs upon all ale, beer, and porter, the amount of the verdict to be computed by custom-house experts.

The jury say that, by direction of the court, they find a verdict for the plaintiffs upon ale, beer, and porter, the amount of the verdict to be computed by custom-house experts, and so say they all.

On motion of Mr. Herrick, ordered that the defendant have a stay of proceedings for thirty days, within which to move for a new trial or to make and serve a bill of exceptions herein.

On like motion, it is further ordered that a certificate of probable cause be entered herein.

Order for judgment.

18 U. S. circuit court, southern district of New York.

JOSEPH PARK, JR., ET AL. vs. EDWIN A. MERRITT. } No. 5884.

Upon the trial of this action, October 29, 1880, the jury herein having found a verdict for the plaintiffs upon ale, beer, and porter, the amount of the verdict to be computed by custom-house experts, and the attorneys for the respective parties now causing the court to be informed that said com-

putations have been made and amount to two hundred and twenty-seven dollars and forty cents principal and twenty-two dollars and ninety-three cents interest to the date of said verdict, amounting in all to the sum of two hundred and fifty dollars and thirty-three cents.

Now therefore, upon motion of Hartley and Coleman, attorneys for the plaintiffs, the United States attorney for the defendant consenting
19 thereto, ordered that judgment be entered in favor of the said plaintiffs and against the said defendant for said sum of two hundred and fifty dollars and thirty-three cents, together with interest thereon from the date of the verdict aforesaid to the date of the docketing of the judgment herein, with plaintiffs' costs to be taxed.

ADDISON BROWN, *Judge.*

Order consented to, the collector having reported in accordance with the fact contained in the recital thereof.

STEWART L. WOODFORD,
U. S. Att'y for Def't.

(Endorsed:) 5884. U. S. circuit court, southern dist. of N. Y. Joseph Park et al. vs. E. A. Merritt. Judgment order. Hartley & Coleman, pl'ffs' att'ys, 62 Wall st., New York City.

20 U. S. circuit court, southern district of New York.

JOSEPH PARK, JR., ET AL.
vs.
EDWIN A. MERRITT. } No. 5884.

Judgment 188 .

The issues in this action having been brought on for trial before the honorable Nathaniel Shipman, judge, and a jury, at a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the third Monday of October, 1880, and the issues having been tried, and a verdict for the plaintiffs having been duly rendered by said jury on the 29' day of October, 1880, for the sum of two hundred and fifty dollars and thirty-three cents, and their costs having been adjusted at forty-six dollars and eighty-five cents, now, on motion of Hartley & Coleman, attorneys for said plaintiffs, it is adjudged that the
21 said plaintiffs recover of the said defendant the sum of two hundred and fifty dollars and thirty-three cents, the amount so found by the jury, with thirteen dollars and seventy-six cents, being interest

250 33	from October 29th, 1880, together with forty-six dollars and eighty-
13. 76	
46. 85	five cents, their costs and disbursements, amounting, in the whole,
$310. 94	to the sum of three hundred and ten dollars and ninety-four cents.

Judgment signed this 28' day of Sept., 1881.

J. M. DEUEL, *Clerk.*

(Endorsed:) 5884. U. S. circuit court, southern dist. of New York. Joseph Park, jr., et al. vs. Edwin A. Merritt. Judgment record 1, 15. Hartley & Coleman, pl'ffs' att'ys, 62 Wall st., N. Y. City. U. S. circuit court. Filed Sep. 2, 1881. Joseph M. Deuel, clerk.

22 *Defendant's proposed bill of exceptions.*

Circuit court of the United States for the southern district of New York.

JOSEPH PARK, JR., ET AL.
vs. } 5884.
EDWIN A. MERRITT.

Afterwards, to wit, on October 29th, 1880, at a stated term of this court, begun and holden at the city of New York, before the honorable Nathaniel Shipman, district judge of the United States for the district of Connecticut, appointed to hold said circuit according to the form of the statute in such case made and provided, the aforesaid issue, so joined as between said parties, as by the record more fully appears, came on to be tried by a jury duly empannelled and sworn for that purpose, the said plaintiffs being represented by Edward Hartley, esq., and the defendant by Albert B. Herrick, esq., assistant U. S. attorney.

And in the course of the trial the said counsel for the defendant did take and allege sundry exceptions to the ruling of the court, which
23 exceptions are hereinafter severally set forth.

To sustain the issues on the part of the plaintiffs the latter proved the importation among others by them, per the Ellen Austin, from a foreign country, into the port of New York, on the 7th day of March, 1879, of a certain quantity of merchandise, to wit, two hundred casks of bottled beer, containing 1,024 gallons; that upon said bottled beer the defendant had exacted a specific duty of 35 cents per gallon and in addition thereto an ad valorem duty of 30 per cent. on the glass bottles containing said beer, which duties the plaintiffs paid to the defendant.

The plaintiffs' counsel then read and put in evidence a paper purporting to be a protest or notice to the defendant as collector, of their dissatisfaction with his decision as to the proper rate of duty on the aforesaid importation, a copy of which is as follows:

"NEW YORK, *April 9th*, 1879.

24 "SIR: We protest against your decision as to the rate and amount of duties to be paid on the bottled beer entered by us for consumption March 7th, 1879, per Ellen Austin from London, because the duty on the bottles is included in the duty upon the contents, 35 cents per gallon, under Schedule D of the tariff.

The bottles are the necessary and usual envelopes of the article imported. The duty on bottled ale, beer, and porter is made higher than on the same unbottled, providing for the bottles in that way.

We pay the excess under compulsion solely to get the goods.

PARK & TILFORD,
By HARTLEY & COLEMAN,
Att'ys, 51 *William street.*

It was also proved by plaintiffs that they had duly protested and appealed to the Secretary of the Treasury and brought suit within the time required by law. It was further proved that the bottles in question were the ordinary ale bottles of commerce. The testimony being closed on the part of the plaintiffs, and no testimony being offered on behalf of

the defendant, the counsel for plaintiffs made a motion to the court to direct a verdict in favor of the plaintiffs, which motion was then and there granted by the court, and to which ruling of the court the counsel for the defendant then and there duly excepted, which exception was noted and allowed by the court.

And a verdict was then and there entered in favor of the plaintiffs for the amount of their claim.

And inasmuch as the foregoing several matters of fact and of law, and the said exception taken and made to the instruction and decision of the court in the course of the said trial do not appear upon the records of the trial, therefore, on the prayer of the said defendant, by his counsel, the said judge has signed the foregoing as and for the bill of exceptions in this cause as of the day of , 1881, the day said verdict was rendered, and at the October term, 1880, of said court.

N. SHIPMAN, *Judge.* [L. S.]

(Endorsed:) 5884. U. S. circuit court, southern district of New York. Joseph Park, jr., & al. versus E. A. Merritt. Defendant's proposed bill of exceptions. Stewart L. Woodford, United States attorney, attorney for defendant.

Bill as interlined agreed to.

HARTLEY & COLEMAN,
Pl'ff's Att'ys.

Due service of a copy of the within is hereby admitted.
New York, April 4, 1881.

HARTLEY & COLEMAN,
Pl'ff's Attorneys.

To Hartley & Coleman, attorneys for pl'ffs.
U. S. circuit court. Filed May 12, 1881. Joseph M. Deuel, clerk.

Assignment of errors.

Supreme Court of the United States.

EDWIN A. MERRITT, PLAINTIFF IN ERROR,
versus
JOSEPH PARK, JR., CHARLES PARK, AND JOHN M. TILFORD, defendants in error. } 5884.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error, by S. L. Woodford, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendants in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants. And the said plaintiff prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and pro-

ceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c., &c., &c.

S. L. WOODFORD,
Attorney for the Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, versus Joseph Park, jr., et al., defendants in error. Assignment of errors. Stewart L. Woodford, United States attorney, attorney for defendant.

Due service of a copy of the within is hereby admitted.
New York, October 3, 1881.

HARTLEY & COLEMAN,
Attorneys for Defendants in Error.

U. S. circuit court. Filed October 3, 1881. Joseph M. Deuel, clerk.

29 *Joinder in error.*

Supreme Court of the United States.

EDWIN A. MERRITT, PLAINTIFF IN ERROR,
vs.
JOSEPH PARK, JR., CHARLES L. PARK, & JOHN M. TILFORD, defendants in error. } 5884.

Afterwards, to wit, on the second Monday of October, in the same term, comes the said defendants in error into court and say there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And they pray the said Supreme Court may proceed to examine the same and the matters above assigned for errors, and that the said judgment may be in all things affirmed, &c.

HARTLEY & COLEMAN,
Attorneys for Def'ts in Error.

30 (Endorsed:) U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, v. Joseph Park, jr., et al. Joinder in error.

Due service hereof admitted Oct. 3, 1881.

STEWART L. WOODFORD,
U. S. Att'y, for Pl'ff in Error.

Hartley & Coleman, att'ys for def't in error, 62 Wall street, New York.
U. S. circuit court. Filed Oct. 3, 1881. Joseph M. Deuel, clerk.

31 UNITED STATES OF AMERICA, *ss:*

To Joseph Park, jr., Charles Park, and John M. Tilford, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-one, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the southern district of New York, wherein Edwin A. Merritt is plaintiff in error, and you are defendant in error, to show cause, if any there be,

why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated October 1st, 1881.

ADDISON BROWN.

32 (Indorsed:) E. & A. U. S. Supreme Court. A—347. Edwin A. Merritt, plaintiff in error, against Joseph Park, jr., et al. defendants in error. Citation. S. L. Woodford, attorney for plaintiff in error.

Service of a copy of the within citation is hereby admitted this 1st day of October, 1881.

HARTLEY & COLEMAN,
Attorneys for Defendant in Error.

U. S. circuit court. Filed Oct. 1, 1881. Joseph M. Deuel, clerk.

(Indorsement on cover:) No. 711. Edwin A. Merrill, collector of the port of New York, plaintiff in error, vs. Joseph Park, jr., Charles Park, and John M. Tilford. S. New York C. C. U. S., Filed October 15, 1881.

108-109

FILED
MAR 3 1883
JAMES H. McKENNEY, CLERK

P. F. McBREEN, Steam Law and Job Printer, 16 Beekman St., N.Y.

U. S. Supreme Court.

EDWIN A. MERRITT,
Plaintiff in Error,

vs.

JOSEPH PARK *et al.*

October Term, 1882.
No. 711.

Brief for Defendant in Error.

STATEMENT.

Park imported, in March 1879, 1,024 gallons of bottled beer.

Merritt, as Collector of Customs, collected a duty of 35 cents per gallon and a separate duty of 30 per cent. ad valorem on the bottles. Record, page 8.

The Revised Statutes provide in Section 2,504, Schedule D, a duty on "ale, porter and beer in bottles 35 cents per gallon, otherwise than in bottles 20 cents per gallon.

Schedule B provides a duty on "glass bottles or jars filled with articles not otherwise provided for 30 per centum ad valorem."

The case of Schmidt *vs.* Badger, decided by this Court a few weeks since, was submitted under the 20th rule without oral argument.

The importance of the question and the omission by

counsel to present to the Court what we regard as controlling considerations compel us to ask a reconsideration of that decision.

POINTS.

I.

The word "*articles*" in the filled bottle clause of the Act of 1861 meant articles *ejusdem generis* with sweetmeats and preserves.

Act March 2, 1861, § 17, 12th Stats., 187.

"All glass bottles or jars filled with sweetmeats, preserves or other articles 30 per cent. ad valorem."

Reiche *vs.* Smythe, 13 Wall., 162.
U. S. *vs.* Irwin, 5 McLean, 178.

This, in the lifetime of the Act, was the construction given by the Treasury Department in its practical enforcement and should control now.

Treasury Decision, No. 1,669. Aug. 28, 1873.

GLASS JARS CONTAINING SALT.

"Jars of this character cannot be classified under the "provision in the Act of March 2, 1861, which imposes "a duty of 30 per cent. ad valorem on 'glass bottles or "jars filled with sweetmeats, preserves or other arti- "cles,' as that clause should, in the opinion of the De- "partment, be construed as if it read *other like articles*."

See also Decision, No. 1,697, Oct. 11, 1873.

Why the word "articles" is limited to articles *ejusdem generis* with sweetmeats and preserves is plain.

Act March 2, 1861, 12th Stats., 187.

§ 17: "All glass bottles or jars filled with sweetmeats, preserves or other articles, 30 per cent. ad valorem;"

Ibid, p. 191, below middle:

§ 22: "Comfits, sweetmeats or fruits preserved in sugar, brandy or molasses, *not otherwise provided for*, 30 per cent. ad valorem."

1. As sweetmeats and preserves were by sec. 22 of the same Act dutiable at 30 per cent. and the bottles containing them liable to the *same duty*, as envelopes, why else were sweetmeats and preserves mentioned in the filled bottle clause, except to show the kind of "other articles" Congress had in mind?

That kind is of small commercial importance, like sweetmeats and preserves, not important enough for separate mention like olive oil, ale, wine, spirits.

2. The words "sweetmeats" and "preserves" would otherwise be not only surplusage but misleading, as indicating a limitation not intended.

3. The correlative use of the words "bottles or jars" shows that the contents came indifferently in bottles or jars like sweetmeats and preserves. In speaking of olive oil the Statute is, "bottles or flasks" of mineral water, "bottles or jugs." Sched. M, Rev. Stats.

4. *Bottles per se* were so *little* the subject of legislative solicitude in the Act of 1861 that they are not mentioned by name.

If, under the Act of 1861, the words "other articles" meant articles *ejusdem generis* with "sweetmeats or preserves," ale, beer and porter are not such articles, and the Statute had otherwise provided for them.

II.

In the Revised Statutes the language is "glass bottles or jars filled with articles not otherwise provided for."

The rule is that the consequent should refer to its nearest antecedent, hence the words "not otherwise provided for" must refer to "*articles*" and the law would thus impose a duty of 30 per cent. on bottles filled with *non-enumerated* articles, subjecting them because coming in glass to at least a glass rate of duty. This construction requires no punctuation and none appears in this Statute, and any punctuation which alters its natural meaning is legislation.

If then the language of the Revised Statutes has altered the law by breaking the connection between sweetmeats, preserves and the other articles, so that the doctrine of *ejusdem generis* no longer obtains, then we say that as the original meaning has perished the language of the revision must be read naturally without reference to the former statutes.

III.

Ale, beer and porter in bottles were never within the meaning of the filled bottle clause of the act of 1861.

Act March 2, 1861, § 6, 12 Stats. 180, levies duties on wines and spirits, provided that all bottles shall pay a separate duty, according to the rate established by this act, *whether* containing *wines*, *brandies* or *other spiritous liquors* subject to duty as hereinbefore mentioned; on ale, beer and porter in bottles 25 cents per gallon; otherwise than in bottles 15 cents per gallon.

Here wine and spirit *bottles* pay a duty *eo nomine*. Ale, beer and porter bottles do not. *Expressio unius est exclusio alterius*. But ale in bottles pays a higher duty than if not in bottles, reaching the result by another process.

This was the practical construction of the Statute by the Treasury Department in administering the law.

Published TREASURY DECISION, Jan. 27, 1866, p. 38.

"The second section of the Act June 30, 1864, imposes a separate duty on bottles containing wines, or other spirituous liquors, but not on bottles containing malt liquors. Ale is not classified as a spirituous liquor, and the second subdivision of the section above referred to, which provides for the duties "on ale, porter and beer" in bottles, does not provide that the bottles shall be subject to duty. The practice of the collectors at other ports is to admit bottles containing malt liquors free of duty. You will therefore cause your practice to conform ~~to~~ therewith."

See also published decisions No. 341, Jan. 22, 1869, and No. 1816, April 25, 1874.

Next came the act of June 30, 1864, sec. 2, imposing a duty on wine, spirits and ale. A duty on wine and spirituous liquor bottles of 2 cents is levied; but ale, beer and porter pay in bottles 35 cents, and otherwise, 20 cents per gallon.

Next, the act of July 14, 1870, sec. 21, advances the duty on wine and spirit bottles to 3 cents each.

Thus those Statutes went into the Revision where a duty is specially laid on wine and spirits, a separate duty on wine and spirit bottles of 3 cents each; a duty on ale, beer and porter of 35 cents per gallon when in bottles, and 20 cents per gallon when not in bottles.

We call attention to these facts that wine, spirits and

ale have always been dutiable together; that wine and spirit bottles have always been expressly provided for in the acts; that ale bottles never have been so expressly provided for; that ale in bottles has always been higher than ale otherwise imported.

No intent can be gathered from the Statute that it desires to encourage bottling here because the duty on *wine and spirits* is *no* higher in bottles than in casks, and because malt liquors are not generally rebottled here, while wines and spirits are.

And again, the reason and purpose of the law is plain, because ale, beer and porter bottles, like wine, are five to the gallon according to trade usage—and a gallon of bottled ale pays 20 cents for the ale and 3x5=15 cents, for the bottles just as the wine does, the only difference being that the duty is obtained in another way.

Schedule D, Rev. Stats.

If these views are correct, then whatever the bottle clause may mean, it has no effect upon ale, beer and porter in bottles.

IV.

The duty levied by the filled bottle clause of the act of 1861 and the Revised Statutes, is an independent duty of 30 per cent. ad valorem upon a well known class of goods, and not a duty upon bottles alone separate from their contents.

1. There was in 1861 and is now a class embracing many small articles of grocer's shelf goods, known as fancy groceries, coming in bottles, jars and cans, such as sweetmeats, preserves, jellies, capers, pickles, sauces,

comfits, gelatine, maccaroni, prepared vegetables, meats, fish, salmon, game, &c., and every one of these articles is dutiable, *eo nomine*, by the act of 1861, at 30 per cent. ad valorem.

But many other like articles exist, and are constantly coming forward into use, for which a general provision was required. Taking then these enumerations, and this fact and the filled bottle clause together, and the idea of Congress seems to have been that all these enumerated articles should pay 30 per cent. ad valorem, in which value the package was necessarily included at the same rate of duty; and that all the other articles of like nature, too numerous to specify in detail, but coming in the same kind of package as the others, should be decribed by the form of package—bottled goods like canned goods—and should pay the same rate of duty, bottles and all, 30 per cent. ad valorem, as the others enumerated of their class.

Again: the language used does not in clear terms state that it is a "separate" duty as in the case of wine and spirit bottles; or, as an "additional" duty to that on the contents. The conclusion is only arrived at by long argument and construction. But on the other hand, when Congress means to impose double duties on articles, its language is always so clear and explicit as to furnish a general rule, which accords with our position. For example:

Schedule A.—Cottons, 5½ cents per square yard, and, *in addition thereto*, ten per centum ad valorem, and so on through the schedule.

Schedule D.—Wines and spirituous liquors by the gallon . . . "and all such bottles shall pay an *additional* duty of three cents for each bottle."

Schedule J.—Cigars, $2.50 per pound, and, *in addition* thereto, 25 per cent. ad valorem.

Schedule L.—Wool, ten cents per pound, and, *in addition* thereto, 11 per cent. ad valorem.

Woolen Cloths, &c., fifty cents per pound, and, *in addition* thereto, 35 per cent. ad valorem, &c.

Schedule M.—Gunpowder 6 cents per pound, and, *in addition* thereto, 20 per cent. ad valorem.

Marble, one dollar per cubic foot, and, *in addition* thereto, 25 per cent. ad valorem.

Mineral Waters (artificial.)—For each bottle or jug, 3 cents, and, *in addition* thereto, 25 per cent ad valorem.

Many others might be cited. Enough are shown to establish the general rule and presumption that, where clear and apt language is not used, it was not intended to impose a double duty.

Glass bottles or jars filled with "sweetmeats" and "fruits preserved," *i. e.*, "preserves" were included in the market value of the articles enumerated in § 22 of the Act of 1861, and thus in their aspect as envelopes were here provided for at the same rate of duty, 30 per cent., as in § 17 of that Act.

As the duty on "all plain and mould and press glassware" (inclusive of empty bottles as merchandise) was by § 17 only 25 per cent., the duty of 30 per cent. under the filled bottle clause was for something more than the bottles, viz., upon the entire import filling and bottles.

Knight *vs.* Schell, 24 How., 526.
Belcher *vs.* Linn, *Ibid*, 533.

Where barrels were dutiable as molasses at 24 per cent., under Schedule C, Tariff of 1846, as amended by the Tariff of 1857.

V.

The long established practical construction of the Treasury Department from the passage of the Act of 1861 to 1879 has been

1st. That the "articles" were only those *ejusdem generis* with "sweetmeats and preserves."

Treasury Decision, No. 1669, Aug. 28, 1873.
No. 1697, Oct. 11, 1873.

2d. Under all tariffs, that envelopes of articles paying specific duties, and of goods free of duty were not taxable, as the general rule,

Treasury Decision, No. 1816, April 25, 1874;
Also, April 2, 1867; January 15, 1867, p. 84.
General Customs Regs. of 1857, p. 179, § 311.
" " 1869, p. 46, § 117.
" " 1874, p. 203, § 437.

3d. That ale, beer and porter in bottles were not chargeable with any separate duty for the bottles.

Treasury Decision, No. 341, Jan. 22, 1869; also, January 27, 1866.

These constructions should now control.

Opinions of Attorney-General: II. 223; *Ibid.* 558, V. 563-4; VII 719-20; IX. 250-251; X. 55-56; XIV. 661.
Stairs *vs.* Peaslee, 18 How., 530.
U. S. *vs.* Bank of North Carolina, 6 Pet., 38, 40.
U. S. *vs.* Tappan, 11 Wheat, 419-422-426.
U. S. *vs.* The Recorder, 1 Blatch., 218
Stuart *vs.* Laird, 1 Cranch, 299.
Edwards Lepree *vs.* Darby, 12 Wheat, 206.
Sedgwick on Stat. and Cons. Law, 251.

VI.

There are two constructions of the filled bottle clause; one that the bottles alone pay 30 per centum duty; the other that the entire importation, bottles and contents, shall pay 30 per centum duty.

If one of these constructions is in harmony with the provisions of the revenue system, and the other not, there is little doubt which to choose.

An ad valorem duty is inapplicable to a "filled bottle" apart from its contents.

Upon the government construction a separate market value for "filled bottles," apart from the market value of their contents, is *necessarily* assumed. In Schmidt *vs.* Badger the issue of the market value of such bottles was admitted away. See Record in that case, page 4, folio 8; and brief of Schmidt's counsel, page 1, "*the valuations of the glass bottles being admitted to be correct.*"

This withheld from the Court the consideration of a material point.

Such "filled bottles" have no independent market value apart from their contents.

Importers buy in the open market, "bottled beer" as a citizen here buys it of his grocer. It is bought and sold from hand to hand at a market price for the whole article. As in the baled wool case of Harding *vs.* Whitney, Mass. Dist. (11 I. R. Rec., 103), Clifford & Lowell, *JJ.*: "The wool was *baled up* before it was purchased in the foreign market, and was purchased and *sold in the bale, leaving no doubt that the price paid included the covering as well as the wool it contained.* In such a case, the words *actual market value*, as used in the sixteenth section of the Act of August 30, 1842, *include the cost of the covering as well as the goods, as the whole are sold together, without any additional charge for the covering.* Such costs and charges enter into and form a

constituent part of the market value and wholesale price of the goods at the place of exportation (Grinnell *vs.* Lawrence, 1 Blatch.. CC., 348; Cobb *vs.* Hamlin, Cir. Ct. Mass. Dist., May T., 1868.) * * *

Where the price paid for the merchandise included the box. package, or covering, the *appraisers have nothing to do but to ascertain the actual market value or wholesale price of the merchandise in the condition as purchased at the time in the principal markets of the country* from which the same was imported."

"Charges for the baling or covering in such cases are not to be added, because they are included in the purchase as *a part of the merchandise.*"

Judge Clifford also decides in Cobb *vs.* Hamlin, 8th Int. Rev. Record, 121–122:

That actual market value does *not* include boxes, packages or coverings, which *subsequent* to the purchase of the merchandise are purchased by the *shipper* as the means of preserving and shipping the goods. "But," he says, "no doubt is entertained that the words actual market value, without more, would include the cost of the box, package, or covering, in *all cases* where the merchandise was actually purchased in the box, package, or covering, and *is usually so purchased* and sold for shipment in the foreign market, and where the *price paid* includes the box, package, or covering, as well as the goods therein contained," and he cites:

Barnard *vs.* Morton, 1 Curtis CC., 412.
Grinnell *vs.* Lawrence, 1 Blatch., 350.
Belcher *vs.* Linn, 24 How., 535.
Knight *vs.* Schell, 24 How., 530.
Wilson *vs.* Maxwell, 2 Blatch., 316.

This Court passed upon a like question in Jones *vs.* Van Benthuysen, 103 U. S., 88–89, and held upon, internal revenue stamps as attached to tobacco, that when once attached they cease to have any separate and inde-

pendent value, and that which they had previously has become merged into that of the tobacco. All subsequent sales are made on the basis of the increased value the tobacco has acquired by the payment of the stamp duty and can never be estimated apart from this.

After the stamps were attached their value necessarily constituted part of the price for which the tobacco sold, and for this price the dealer should be taxed.

The principle is the same in this case. Whatever separate values ale, labor, bottles, corks, capsules, labels, and wire, might once have had prior to their unison, have been merged into the market value of the bottled ale imported and can never be estimated apart from this.

But the more valuable bottled ale pays, therefore, a higher duty than bulk ale.

If "filled bottles" are assumed to be dutiable at ad valorem rates as independent merchandise, then it follows that the statutory provisions for invoicing, entering and appraising the market value of *all goods dutiable ad valorem* should be applicable to them but as these statutory requirements are manifestly inapplicable the assumption must be incorrect as it cannot be given practical effect under the statute.

Revised Statutes, Sec. 2838: "The invoice must con-"tain a true statement of the actual cost of such mer-"chandise in the foreign currency" (*actual cost means price paid by the purchaser*).

Sec. 2839: Forfeiture of goods not invoiced at "actual cost."

Sec. 2852: Invoice to be the only evidence from the owner of the value of such merchandise.

Secs. 2853, 2854 and 2845, 2860: Invoice to be "in all respects true," that it contains, if the merchandise is

subject to *ad valorem duty*, and obtained by purchase, a true and full statement of the time when and the place where the same was purchased, and the actual cost thereof and of all charges thereon and when obtained in any other manner than by purchase, the actual market value thereof at the time and place when and where the same was procured or manufactured, and that no different invoice of the merchandise in the invoice has been or will be furnished to any one.

Sec. 2860: This declaration must be on oath.

Secs. 2864–5: Forfeiture and penalties follow any false statements.

How can the ordinary purchaser in the open market of bottled beer truthfully swear to a separate market value of filled bottles, or that he paid any price for them?

And yet Section 2860 forbids the admission to entry of any goods if the invoices do not comform to these requirements.

Goods having been invoiced must be entered at the Custom House, with the sworn invoice and under oath.

Sec. 2841: States the contents of the entry oath, that the invoice is the only one, and that it conforms to the foregoing provisions of law.

Sec. 2842: No entry is permitted without such oath.

Sec. 2900: Provides that the importer may at the time of entry make additions in the entry to the values of the invoice to make market value abroad at the date of shipment, but that if the appraised value shall exceed by ten per centum or more the entered value a penal duty must be collected.

Entry having been made, appraisement follows:

§ 2,902. The appraisers are to determine "*the true and actual market value and wholesale price at the time*

of exportation, and in the principal markets of the country whence the same has been imported into the United States," of the merchandise.

§ 2,930. Re-appraisers are to discharge like functions.

§ 2,904. The *date of shipment* to the United States, as per bill of lading, is *the time* when *the value* is to be ascertained.

§ 2,952. The words "value" and "valued" mean the *true market* value of merchandise in the principal markets of the country from whence exported, *at the date of exportation.*

Market value having been appraised, dutiable value follows by adding charges.

§ 2,907. There shall be added the cost of transportation, shipment and transhipment, with all expenses included, from the place of growth, production or manufacture, to the vessel in which shipment is made to the United States; the value of the sack, box or covering of any kind in which such merchandise is contained, commissions, &c., and all other actual or usual charges for putting up, preparing and packing for transportation or shipment.

§ 2,908. All *additions made to the entered value of the merchandise for charges shall be regarded as part of the actual value of such merchandise*, and if such additions shall exceed by ten per centum the value declared in the entry, then an additional penal duty of twenty per centum shall be collected.

And by—

§ 14. Act June 22, 1874, 18 Stats., 189: Additions by the customs officers for charges, cost of packages, boxes or other articles containing such goods, &c., when omitted

by the importer, carry a penalty of 100 per cent. of such additions, which additions shall constitute a part of the dutiable value of such goods, and shall be collectible as duties on imports.

In purchases of bottled goods, it has been shown *supra* that bottles are not charges to be added to, but are already a part of, the market value of the goods. They are not shipping charges at all.

It must be evident that any appraisement of the general market value of a filled bottle is guess work.

Many bottles are never bought and sold as general merchandise, because of special shapes, patterns and sizes, with proprietary names or advertisements blown in the glass. Many are protected by trade mark and proprietary laws, and have no value in the market except perhaps as old glass.

Again: Duty is claimed on the market value of "*filled* bottles," not of empty bottles, at date of shipment.

Let it be once declared as law, that "filled bottles" are dutiable at 30 per cent. ad valorem, separate and apart from their contents, and then the importation of bottled goods becomes impossible under this system, for the invoices, entries, appraisements and oaths cannot be observed and applied, and consequently the Statute forbids the entry (§ 2,860).

But, on the other hand, the law contemplates the importation of bottled ale, and levies a separate duty thereon of 35 cents per gallon. Hence, we must conclude that the foregoing system was not deemed applicable to bottled ale, and that the intention was, on the part of Congress, that no ad valorem duty should be levied on the article in part or in whole.

By the methods established for invoices, entries and appraisements, and the addition of charges if a duty of 30 per cent. ad valorem is to be levied on the market

value of the filled bottle, such value must, according to law, be sworn by the shipper, owner and importer to exist separate from its contents; it must be separately stated, and found by appraisement. Any attempt to do this is falsity, and entails the liability for false oaths. But if no attempt and no such statement are made then, if the bottles are construed to be charges, the law condemns them to pay a penalty of 100 per cent. of all additions. (§ 14, Act June, 1874, 18 Stats., 189); and a penal duty of 20 per cent. besides. (Rev. Stats., § 2,900, § 2,908).

Courts will not favor such constructions:

United States *vs.* Tappan, 11 Wheat., 419-426.

"No statute ought to receive a construction that will render it nugatory, or which prescribes a rule utterly impracticable without incurring the guilt of perjury."

This was a market value case. See also:

Marriott *vs.* Brune, 9 How., 635.
Merritt *vs.* Welsh, 104 U. S., 702.

VII.

Of the opinion of this Court, in Schmidt *vs.* Badger, No. 878, October Term, 1882, it is to be said:

No light is thrown on the subject by § 3, Act of January 29, 1795 (1st Stats., 411), "and that bottles in which any liquor is imported shall be subject to the payment of the like duty as empty bottles." Commercially and for revenue purposes, ale and beer are not liquors.

"Liquors, a general term for *distilled spirits*, used as "beverages, as brandy, gin, rum, whiskey, &c."

McElrath's Com'l Dic'y, p. 298.

And, moreover, the duty Act of 1795 was repealed by Act of April 27, 1816 (3 Stats., 310), and never re-enacted.

"That from and after the 30th day of June, one thou-
"sand eight hundred and sixteen, the duties heretofore
"laid by law on goods, wares and merchandise shall
"cease and determine, and there shall be levied and
"collected and paid the several duties hereinafter men-
"tioned—that is to say: 'Sixth. The following duties,
"severally and specifically, on ale, beer and porter, in
"bottles, fifteen cents per gallon; on ale, beer and por-
"ter, imported otherwise than in bottles, ten cents per
"gallon.'" * * * 'Fifth * * * "And in all cases
"where an ad valorem duty shall be charged it shall be
"calculated on the net cost of the article at the place
"whence imported (exclusive of packages, commissions
"and all charges).'"

Citations from later acts show certain special and additional duties levied upon bottles containing "wines," also "*brandies* or other *spirituous* liquor"—*expressio unius est exclusio alterius.* Malt liquors are not only *not* "wines" *nor* "*spirituous* liquors," and, therefore, are unaffected by such specific enumerations, but in every act have been separately provided for in distinction from those articles, and in distinction from the separate bottle duty specifically levied on those articles, generally thus—ale, beer and porter in bottles, and otherwise than in bottles. Not only have the specific contents, "wine," brandy, &c., been distinctly mentioned, leaving no doubt as to the articles intended, but the bottle duty has always been imposed as an *additional* duty. It has not been left open to doubt in *this* regard. The general rule is (the few exceptions being only inadvertent, and soon corrected), that this extra bottle duty has always been specific, capable of ascertainment by count, and entailing no difficulty of administration. Thus the Act of 1842, 5 Stats., 553, § 5, imposed $3 per gross on bottles; the Act of 1864 is 2c. per bottle; the Act of 1870 is 3c.

per bottle, and Schedule D of the present tariff is 3c. per bottle. How exactly this corresponds with the difference in the specific duty per gallon between ale in bottles and not in bottles, viz., fifteen cents, may be realized from the fact within common knowledge that ale bottles average about five to the gallon, which, at three cents each, is just the difference.

It is beyond reasonable conception that ale in bottles treated of in every general tariff from 1789 and in the foregoing manner, if intended by Congress to pay a separate and additional duty on the bottles, should not have been subjected to it in as plain language as wines and spirituous liquors.

Such terms as "mannfactures of glass" or "plain mould or press glass" are applied to merchandise but not to the envelopes of commercial articles the contents dutiable at *different rates*. In Arthur *vs.* Sussfeld, 96 U. S., 128, the separation of the import into parts would, if practicable, have been a *convenient* solution of the difficulty in classifying steel bowed spectacles, viz., the glass at 40 per cent. and the steel at 45 per cent., as manufactures of steel, but it was not so held, nor was it practicable. And in the present case the very uncertainty of the suggestion that, as manufactures of glass, envelopes pay 40 per cent., *or*, as plain mould or press glass, 35 per cent., is a reason why these clauses do not apply to "ale in bottles."

It is significant that while all this controversy has suddenly arisen about bottles there is no duty levied by the Statute on bottles *eo nomine;* that is, as empty bottles; consequently, we must assume that they are not the objects of special solicitude or *discrimination* on the part of Congress.

The suggestion of the Solicitor General that the marked increase (75 per cent.) of duty on bottled ale over cask ale was to encourage the bottling of ale

here after its importation in casks (and inferentially) that 30 per cent. additional would give further encouragement is unsound.

It is common knowledge that beer and malt liquors in casks, reach the consumer directly from the cask, drawn by an ale pump at the bar into his glass; and not like still wines which are bottled here after importation. The effervescent quality of bottled ale needs the bottle, and here it is to be noticed that wines coming in casks, and in bottles, but always reaching the final consumer in a bottle pay the *same rate per gallon* whether *in bottles or casks*, and if in bottles 3 cents additional for each bottle, and the difference in the duty of bottled ale over cask is just this 3 cents as has been shown.

If there was any intention to protect the bottling of ale by imposing 30 per cent. additional on the bottles separately, would the large importations in stone or earthenware bottles have been overlooked. No separate duty is imposed on such bottles, and the reason fails as to them. And, is it to be presumed that Congress intended to discriminate between ale in glass bottles, and ale in stone bottles when both are put on the same footing, ale in bottles 35 cents per gallon.

We take issue with the statement that "the principle of imposing a duty on the sack, box or covering of any kind in which a dutiable article is imported *separate from and additional to* the duty on such article is applied by § 2907 of the Revised Statutes."

The language of the Statute is "in determining the *dutiable value of merchandise* there shall be added" to the market value the value of the sack, &c., and by § 2908 "all *additions* made to the entered value of the merchandise for *charges* shall be regarded as *a part of the actual value of such merchandise.*"

So that charges are added only for completing and equalizing the *value of goods* dutiable ad valorem and pay

no duty separate from, or additional to or different from that of the goods themselves, but are declared by the Statute to be "a part of the actual value of such merchandise." This being so they have no separate or additional existence under the Statute for any purpose whatever.

For goods paying specific duties there is no necessity for equalization of values as the duty is specific and each importer pays the same duty for the same quantity of goods regardless of inequalities of values. To emphasise its disregard of packages in such cases the law has prescribed allowances for tare, § 2898 Rev. Stats. This means that in case of specific duties the packages are to be discarded for duty purposes.

There have been a few expressed exceptions and "separate" and "additional" duties levied, viz., 3c. per bottle for "wines" and "spirituous liquors," but they only enforce the general rule that charges are disregarded generally when specific duties are imposed. The fact and reason stated by the Solicitor-General in his brief in Schmidt *vs.* Badger, p. 2, is true and meets the case, viz.: "*No such general provision exists or well could as to specific duties.*"

The *statute*, however, having made *certain specific* provisions, he seeks to fill up what he supposes to be gaps in legislation by supplementing these exceptions with *construction* of general provisions which, *primarily*, by his own statement, "do not exist" nor "well could."

The state of the law set forth by Chief Justice Taney in 1840, Taney's Decisions, 94–98, Karthaus *vs.* Frick. "In no instance has Congress imposed a duty on the vessel, material or outside wrapper or package in which merchandise was imported charged with specific duty" was based not on the repealed act of 1795, but on that of 1816 and subsequent acts in force in 1840.

The general rule, there stated, has also been followed by Congress in subsequent tariff legisla-

tion and until this controversy has always been observed by the Treasury Department. For instance, the duty on salt in sacks is to-day by Schedule M 12 cents per 100 pounds; that in bulk, 8 cents. Schedule C levies duties on bags *eo nomine* 40 per cent., and yet bag salt never is charged with a separate duty on bags and, too, the weight of the bags is rejected as tare.

Earlier in this brief we have shown that the practical construction has ever been that ad valorem costs and charges are inapplicable to goods free of duty or charged with specific duties.

VIII.

The highest duty is never imposed on a citizen in case of serious ambiguity in the language of an Act, or doubtful classification of articles, or vague or doubtful interpretation, and in all such cases the construction must be in favor of the importer.

Powers *vs.* Barney, 5 Blatch., 202.
Adams *vs.* Bancroft, 3 Sumner, 387.
U. S. *vs.* Wiggleworth, 2 Story, 369.
U. S. *vs.* Morse, 2 Ibid., 87.
U. S. *vs.* Ullman, 4 Benedict, 553.
Phila. & Reading RR. *vs.* Kenney, 18 Int. Rev. Rec., 92.

"If there be a doubt as to the liability of an instru-
"ment to taxation, the construction is in favor of the
"exemption, because, in the language of Pollock, C. B.,
"in Girr *vs.* Scudds, 'a tax cannot be imposed without